FRANCIS X. FURLONG II

IBLA 83-310 Decided May 16, 1983

Appeal from decision of the New Mexico State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease NM 44476 and declaring the lease terminated by operation of law.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the rental payment is received within 20 days after the date of termination.

2. Administrative Authority: Estoppel -- Estoppel

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A sine qua non of estoppel of the Government is affirmative misconduct by an authorized officer which results in a misrepresentation of fact upon which there is detrimental reliance. Unless a wrong was consciously committed, the failure to correct a misunderstanding is insufficient grounds for estoppel.

3. Estoppel -- Oil and Gas Leases: Rentals -- Regulations: Generally -- Statutes

An essential element of a claim for estoppel is that the party asserting it

> must be ignorant of the material facts. Since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, a party cannot successfully plead ignorance of the rules governing oil and gas rental payment procedures without presentation of extraordinary circumstances which overcome the presumption.

APPEARANCES: Wm. Alan Wright, Esq., Santa Fe, New Mexico, for appellant; John H. Harrington, Esq., Field Office, Southwest Region, Office of the Solicitor, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Francis X. Furlong II appeals from a December 21, 1982, decision of the New Mexico State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease NM 44476 and declaring the lease terminated by operation of law on August 1, 1982. The rental payment was received on November 23, 1982. BLM cites 43 CFR 3108.2-1(c), which provides that the lease may be reinstated if the rental has been paid or tendered within 20 days of its due date and it is shown that the failure to timely pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

In his statement of reasons, appellant argues that the circumstances in this case present an instance where the conduct of BLM so offends notions of justice and elementary fairness that under the recognized principles of equitable estoppel, BLM should be estopped from terminating the lease. As the basis for his argument, appellant asserts the following events:

> From a prior experience in 1980 with the Utah State Office of the BLM in which I attempted to make a second year rental payment on oil and gas lease U 42563 without an accompanying rental payment notice and was not allowed to do so, I was under the impression that a rental payment notice was required to be submitted with every lease rental payment made to BLM. * * * I was still working in Saudi Arabia when the due date for my second annual rental payment on lease NM 44476 arrived. As I had received no rental payment notice, I telephoned the Santa Fe office of the BLM to inform the BLM that I had not received the payment notice and that I was waiting for it to arrive before sending in my annual rental payment. I was informed by BLM personnel in Santa Fe that the notice had been mailed and would be arriving soon. * * * [T]he anniversary date of the lease passed before I made the required lease payment. The notice had been improperly addressed with my then country of residence, Saudi Arabia, omitted entirely from the address. * * * Had I not been laboring under the misinformation supplied me in my dealings with the Utah State Office of the BLM, and had the improperly addressed rental payment notice sent by the New Mexico office of the BLM arrived in Saudi Arabia in a timely manner, I would have been able to make the lease payment by August 1, 1982, the anniversary date of the lease. * * *

> I never received a reply informing me of either my factual misapprehension regarding the requirement of obtaining a rental payment notice or the consequences of failing to make a timely rental payment.

Appellant claims that it was not until he realized "that he had essentially been duped and misled" by BLM that he paid the rental payment and filed a petition for reinstatement.

[1] An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities terminates by operation of law if the annual rental payment is not received in the proper office of BLM on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior may reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid within 20 days of the anniversary date and upon proof that such failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). Since the provisions governing reinstatement of an oil and gas lease terminated by operation of law for untimely payment of rent are statutory, the Department has no authority to reinstate a lease that has terminated for that reason unless the payment is actually received or tendered at the proper office within 20 days after the anniversary date. That did not occur in this case. Consequently, the lease is not eligible for reinstatement by this Board. Peter R. Buehler, 67 IBLA 242 (1982); Trend Resources Limited, 64 IBLA 383 (1982); Sun Oil Co., 63 IBLA 26 (1982).

[2] Because appellant is now precluded from the benefits of reinstatement under 30 U.S.C. § 188(c) (1976) because his lease rental was unpaid 20 days after the lease terminated by operation of law, 1/ and the Secretary is without authority to afford the relief requested, we need not address the contention that BLM should be estopped. However, since that condition is so strongly asserted, we will offer these comments as obiter dictum, while recognizing that an equitable remedy cannot alter a result ordained by statute.

In a previous discussion of estoppel against the United States, we stated:

> On several occasions, this Board has acknowledged the passing of the traditional rule that estoppel cannot be invoked against the Government and has recognized the elements of estoppel

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1/ We note that section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, amends section 31 of the Mineral Leasing Act, 30 U.S.C. § 188 (1976), to afford an additional opportunity to reinstate a lease terminated by operation of law. If appellant wishes to avail himself of this provision, he should immediately inquire at the New Mexico State Office, BLM. However, reinstatement under this provision is at the discretion of the Secretary, and is not something to which appellant is entitled as a matter of right. See H.R. Report No. 97-859, 97th Cong., 2d Sess. 40, reprinted in 1982 U.S. Code Cong. & Ad. News 4268, 4294.

> set forth by the Ninth circuit in United States v. Georgia-Pacific Company, 421 F.2d 92 (9th Cir. 1970) as the initial test for determining whether estoppel is appropriate. Edward L. Ellis, 42 IBLA 66 (1979); United States v. Larsen, 36 IBLA 130 (1978); Henry E. Reeves, 31 IBLA 242 (1977). The elements of estoppel as identified in Georgia-Pacific are
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> > (1) The party to be estopped must know the facts; (2) he must intend that this conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; (4) he must rely on the former's conduct to his injury.
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> However, we have also agreed with that statement in the decision of the district court in United States v. Eaton Shale Co., 433 F. Supp. 1256, 1272 (D. Colo. 1977), which declared that "estoppel of the government is an extraordinary remedy, especially as it relates to public lands, and is to be applied with the greatest care and circumspection." Edward L. Ellis, 42 IBLA 66 (1979).

State of Alaska, 46 IBLA 12, 21 (1980).

Subsequently, the Georgia-Pacific test was adhered to in United States v. Ruby Co., 588 F.2d 697 (9th Cir. 1978), cert. denied, 442 U.S. 917 (1979). In applying the Georgia-Pacific test, this Board has stated that the sine qua non of estoppel against the Government is affirmative misconduct by an authorized officer, resulting in a misrepresentation of fact upon which the party seeking estoppel relied to his detriment. D. F. Colson, 63 IBLA 221 (1982); United States v. Jackson, 53 IBLA 289 (1981). Appellant argues that BLM consciously failed to respond to his misconception of the payment process and, thus, perpetuated and exacerbated a situation detrimental to him. However, absent some means to verify the alleged telephone conversation and exactly what was said, there is nothing to suggest that the New Mexico State Office knew, or had any reason to know, about appellant's misunderstanding gained from his previous encounter with another state office until the anniversary (due) date and the subsequent 20-day period had passed.

In a previous decision of this Board involving termination of an oil and gas lease for failure to timely submit the annual rental payment, a lessee argued that he received incorrect information in a telephone conversation with a BLM state office. In response to the lessee's argument that he acted in reliance on the advice he received over the telephone, we observed: "This Board is not prepared to accept appellant's summary of a telephone conversation with an unidentified employee. We do not know what facts were presented by appellant during the conversation nor in what context the advice was given." C. J. Iverson, 21 IBLA 312, 323, 82 I.D. 386 (1975).

Without a reasonably definite presentation of the situation, it would be unreasonable to interpret a positive response over the telephone that the rental notice had been sent as an affirmative action intended to induce appellant to wait until he received the notice before tendering his payment. There

is no indication that the unidentified person at the New Mexico State Office with whom he conversed was apprised of the facts and the misconception he harbored regarding the payment process, or that such person was even authorized to interpret the payment procedures for the benefit of appellant.

Furthermore, it has been a consistent policy of the Department that reliance upon receipt of a courtesy notice can neither prevent the lease from termination by operation of law nor serve to justify a failure to timely pay the lease rental. See id. at 320, 82 I.D. at 390. Unless appellant properly indicated his misunderstanding, the New Mexico State Office likely acted under the presumption that he understood this principle.

For appellant to successfully assert estoppel in this situation, he would need to establish that an appropriate BLM officer or agent, who was apprised of the circumstances and understood appellant's misconception, misinformed him, realizing that he would rely upon the information. Unless BLM consciously perpetuated a previous wrong, the alleged failure to correct appellant's misunderstanding is no grounds for estoppel with respect to termination of the lease in question. The facts alleged by appellant do not establish these elements of estoppel.

[3] Another essential element of an estoppel claim is that the party asserting it must be ignorant of the material facts. In this situation, the primary fact to which appellant claims he was mislead was the applicable statutory and regulatory rules relating to timely rental payments. It is established that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Termination of a lease by operation of law for failure to pay rentals on or before a lease's anniversary date is codified at 30 U.S.C. § 188 (1976) and 43 CFR 3108.2-1. Moreover, it is reiterated in section (e) of the lease itself. Because of the knowledge imputed to him, and actually in his possession, appellant cannot successfully claim his ignorance of the material facts without presentation of extraordinary circumstances which overcome the presumption. Harold E. Woods, 61 IBLA 359 (1982). Appellant has not shown that this presumption was overcome through alleged actions by BLM and, thus, fails to establish this element of estoppel.

As noted, estoppel of the Government is an extraordinary remedy to be applied with the greatest care and circumspection. Public considerations also demand that estoppel not be applied without compelling reasons. Appellant relies upon United States v. Wharton, 514 F.2d 406 (9th Cir. 1975), and Brandt v. Hickel, 427 F.2d 53 (9th Cir. 1970), as justification for applying estoppel to this situation. However, in both those cases, "crucial" misstatements were made by authorized officials who apparently understood the context in which the instructions were given. Appellant's factual account does not favorably compare with those situations nor present reasons which compel application of this "extraordinary remedy." Appellant should have known the consequences for failure to timely pay the annual rental and that reliance upon receipt of a courtesy notice can neither prevent the lease from termination by operation of law nor serve to justify a failure to timely pay the lease rental.

Inasmuch as appellant has failed to comply with the statutory prerequisites of 30 U.S.C. § 188(c) (1976) for reinstatement of his lease and has not presented circumstances which justify applying the estoppel principle, we are without authority to grant him either form of relief from the termination of his lease. Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge